

## § 536.1

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AUTHORITY: 10 U.S.C. 939, 2733, 2734, 2734a, 2736, 2737, 3012, 4801 through 4804, and 4806; 28 U.S.C. 1346(b), 2401(b), 2402, 2671 through 2680; and 32 U.S.C. 715.

SOURCE: 54 FR 43892, Oct. 27, 1989, unless otherwise noted.

### Subpart A—General Provisions

#### § 536.1 Purpose and scope.

(a) *Purpose.* Part 536 prescribes policies and procedures to be followed in the filing, investigation, processing and administrative settlement of Department of Army (DA) generated non-contractual claims. Sections 536.1 through 536.13 contain general instructions and guidance for the investigation and processing of claims and apply to all claims unless other laws or regulations specify other procedures. They are intended to ensure that incidents that may result in claims are promptly and efficiently investigated under supervision adequate to ensure a sound basis for official action and that all claims resulting from such incidents are expeditiously settled. The Secretary of the Army has delegated authority to The Judge Advocate General (TJAG) to assign areas of responsibility and designate functional responsibility for claims purposes. TJAG has delegated authority to the Commander, U.S. Army Claims Service (USARCS) to carry out these responsibilities. USARCS is the agency through which the Secretary of the Army and TJAG discharge their responsibilities for claims administration. The proper mailing address of USARCS is Com-

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mander, U.S. Army Claims Service, Office of The Judge Advocate General, Fort George G. Meade, Maryland 20755–5360.

(b) *Scope—(1) Applicability.* (i) Sections 536.20 through 536.35 apply in the settlement of claims under the Military Claims Act (MCA) (10 U.S.C. 2733) for personal injury, death or property damage that was either caused by members or employees of the DA acting within the scope of their employment or otherwise incident to noncombat activities of the DA.

(ii) Section 536.40 sets forth the procedures to be followed and the standards to be applied in the processing of claims cognizable under Article 139, Uniform Code of Military Justice (UCMJ) (10 U.S.C. 939) for property willfully damaged or wrongfully taken or withheld by members of the DA.

(iii) Section 536.50 governs the administrative settlement of claims under the Federal Tort Claims Act (FTCA) (28 U.S.C. 1346(b), 2671–2680) for personal injury, death or property damage caused by the negligent act or omissions of members or employees of the DA while acting within the scope of their employment.

(iv) Section 536.60 provides the procedures to be followed in the settlement of claims under the Army Maritime Claims Settlement Act (10 U.S.C. 4801–4804, 4806) for damage caused by a vessel of or in the service of the Army.

(v) Sections 536.70 through 536.81 provide instructions for settlement of claims under the National Guard Claims Act (NGCA) (32 U.S.C. 715) for personal injury, death or property damage that was either caused by a member or employee of the Army National Guard (ARNG) while in training or duty under Federal law, and acting within the scope of their employment; or otherwise incident to noncombat activities of the ARNG not in active Federal service.

(vi) Sections 536.90 through 536.97 provide instructions for settlement of claims under 10 U.S.C. 2737 for personal injury, death or property damage (not cognizable under any other law) incident to the use of Government property by members or employees of the DA.

(2) *Nonappropriated fund activities.* Claims arising from acts or omissions of employees of nonappropriated fund activities within the United States, its Territories, and possessions, are processed in the manner prescribed by applicable regulations. In oversea areas, such claims will be processed in accordance with treaties or agreements between the United States and foreign countries with respect to the settlement of claims arising from acts or omissions of military and civilian personnel of the United States in such countries, or in accordance with applicable regulations as appropriate.

(3) *Nonapplicability.* Sections 536.1 through 536.13 do not apply to:

(i) Contractual claims which are under the provisions of Public Law 85-804, 28 August 1958 (72 Stat. 972) and AR 37-103, AR 37-103 and other Army Regulations referenced herein are available thru: National Technical Information Services, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161, or other regulations including acquisition regulations.

(ii) Maritime claims (§ 536.60).

#### § 536.2 Information and assistance.

(a) Government personnel may not represent any claimant or receive any payment or gratuity for services rendered. They may not accept any share or interest in a claim or assist in its presentation, under penalty of Federal criminal law (18 U.S.C. 203, 205). They are prohibited from disclosing information which may be the basis of a claim, or any evidence of record in any claims matter, except as prescribed in §§ 518.1 through 518.4 of this chapter or other pertinent regulations. A person lacking authority to approve or disapprove a claim may not advise a claimant or his representative as to the disposition recommended.

(b) The prohibitions against furnishing information and assistance do not apply to the performance of official duty. Any person who indicates a desire to file a claim against the United States will be instructed concerning the procedure to follow. He will be furnished claim forms, and, when necessary, will be assisted in completing the forms and assembling evidence. He will not be assisted in determining

what amount to claim. In the vicinity of a field exercise, maneuver, or disaster, information may be disseminated concerning the right to present claims, the procedure to be followed, and the names and locations of claims officers, and engineer repair teams. When the government of a foreign country in which the U.S. Armed Forces are stationed has assumed responsibility for the settlement of certain claims against the United States, officials of that country will be furnished pertinent information and evidence so far as security considerations permit.

#### § 536.3 Definitions and explanations.

The following terms as used in §§ 536.1 through 536.13 and the matters referred to in § 536.1(b) will have the meanings here indicated:

(a) *Affirmative Claims.* The government's statutory right to recover money, property, or repayment in kind incurred as a result of property loss, damage, or destruction by any individual, partnership, association or other legal entity, foreign or domestic, except an instrumentality of the United States. Also, the Government's statutory right to recover the reasonable medical costs expended for hospital, medical, surgical, or dental care and treatment (including prostheses and medical appliances) incurred under circumstances creating tort liability upon some third person.

(b) *Civilian Employees.* Civilian employee means a person whose activities the Government has the right to direct and control, not only as to the result to be accomplished but also as to the means used; this includes, but is not limited to, full-time Federal civilian officers and employees. The term should be distinguished from the term "independent contractor" for whose actions the Government generally is not liable. The determination of who is a civilian employee is a Federal question determined under Federal law and not under local law.

(c) *Claim.* A demand for payment of a specified sum of money (other than the ordinary obligations incurred for services, supplies or equipment) and, unless otherwise specified in this regulation, in writing and signed by the claimant